

DATE: April 29, 2003

In Re:

-----

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00543

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric C. Hogan, Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated security concerns over foreign influence from his family and other ties to his country of birth, India. Given his strong ties to the United States (US) where he has lived 25 years and as he has been a naturalized citizen since 1984, I conclude there is no substantial likelihood that his family ties would lead to foreign influence over Applicant. Further, Applicant has a long history of responsible conduct in the US military where he had a security clearance for twenty years. I conclude it is improbable that foreign pressure on his family would create a situation that could result in the compromise of classified information or subject him to duress. Further, his references attest to his good character and professionalism at work. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 29, 2002. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. <sup>(1)</sup> The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on November 18, 2002, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on December 20, 2002. Although initially assigned to another judge, the case was reassigned to me on December 20, 2002. Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on January 7, 2003, set the matter for hearing on February 14, 2003. At the hearing the Government introduced two exhibits (Exhibits 1 & 2) and asked that I take official notice of two documents (Exhibits I and II). (TR 10, 14-17) Applicant did not object, so I admitted Exhibits 1 & 2 in evidence and Exhibits I and II for Official Notice. Applicant represented himself; he testified and offered two exhibits (Exhibits A and B) which were admitted into evidence. (TR 17-20) He requested seven days to submit additional evidence which I granted him until February 21, 2003; she had three days to review the documents. (TR 23-24, 45) On February 19, 2003, Applicant submitted three documents (Exhibits C, D, & E) which the Department

Counsel reviewed; on February 20, 2003, she advised she had no objection, so Exhibits C, D, & E were admitted into evidence; and the record closed. The transcript (TR) was received on February 20, 2003.

## **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, a 50-year-old employee, began working for a defense contractor in State #1 as an engineer in November 1999. He applied for a security clearance in January 2001; he completed a Security Clearance Application (Standard Form 86) and requested a security clearance. He stated he was granted an Interim Secret clearance. (Exhibit 1; TR 48)

### **Foreign Influence**

Born in India, Applicant came to the United States (US) in 1977 to work for an uncle in State #2; in 1978 he moved to State #3 as his uncle opened another store there. (Exhibit 2)

Applicant joined the US military as an immigrant in December 1979. He served in the military until January 2000 when he retired honorably with the rank of aster Sergeant, E7. While he was in the military, he was granted access to classified information and had a Secret security clearance granted in 1980, a Sensitive Compartmented Information (SCI), a Top Secret clearance granted in 1991, and a Secret clearance granted in April 2000. (Exhibits 1 & 2, Exhibit A; TR 21-22, 45)

Applicant became a naturalized US citizen in February 1984 and currently holds a US passport. (Exhibit 1; TR 31) He has not traveled to India for more than 20 years. (TR 30, 44)

Applicant received a graduate degree in December 2000 from a State #1 university. He was married in 1982; his wife became a naturalized US citizen in 1987. They have a child born in 1984 who is a US citizen. (Exhibit 1)

Applicant has enhanced the security of the US by his 20 years of military service. (Exhibit A; TR 20-22) He has no overseas property or financial interests. (Exhibit 2; TR 41) He stated he would be diligent in reporting any overseas or foreign suspicious contacts. He would never engage in illegal conduct because of his relatives. (TR 42-444) While he has the following overseas foreign relatives, none have any connection with a foreign government. (Exhibit 2)

- He has a brother who became a naturalized US citizen in July 2001 and has resided in the US for ten years; he has a sister who is a citizen of India, but has resided in the US for seven years, has a green card, and has applied for US citizenship in July 2002. (SOR 1.a.) (Exhibits 1, 2; TR 23-24, 32-; Exhibit C and D)
- He has a sister who is a citizen of India and resides in India; she is a housewife with no contact with the government of India. She has applied to come to the US. He has not seen her for more than 20 years. (SOR 1.b.) (Exhibits 1, 2; TR 25-26, 34)
- He has a sister who is a citizen of Canada and resides in Canada; she and her husband have a shop and have no ties to the government of Canada. He saw her a year ago in Canada. (SOR 1.c.) (Exhibits 1, 2; TR 26-27, 34-35)
- He has a stepson who is 24 who is a citizen of and resident of South Korea and was brought up by his father in South Korea; Applicant has no personal relationship with him and very limited contact with him. His wife did not have contact with her son for twenty years, and now has only limited contact with him. (SOR 1.d.) (Exhibits 1, 2; TR 27-28, 35-39)
- His wife has a brother, sister, aunt and uncle, and a niece who are citizens of and reside in South Korea, but he does not have much contact with his wife's relatives; none of them work for the government. (SOR 1.e.) (Exhibits 1, 2; TR 28, 36-37)

Also, Applicant has a friend who is a citizen of India who resides in the Dominican Republic and was a former employee of the Indian Ministry of Foreign Affairs. Applicant saw him at his home in the US in 1998, and this friend has visited Applicant at his home in State #1 in 2000; they communicate by e-mail and telephone. His friend has a business in the Dominican Republic, but no ties to any government. (SOR 1.f.) (Exhibits 1, 2; TR 29-30, 39-40, 44-45)

While he was stationed with the US military in the Republic of Korea between 1980 to 1982, Applicant was still a citizen of India. He visited the Indian Embassy in Seoul to see his friends at least once or twice weekly. (SOR 1.g.) While visiting there he befriended an Indian citizen and socialized with him on a weekly basis between 1980 to 1982. (SOR 1.h.) Applicant occasionally would spend the night at the Indian Embassy in Seoul. (SOR 1.i.) The Indian Ambassador to the Republic of Korea invited Applicant to his residence for a social visit in 1981. (SOR 1.j.) (Exhibits 1, 2; TR 30-31) Applicant's military assignment in South Korea ended in 1982; Applicant later had another assignment in South Korea in 1984, but he no longer had contacts with these friends. (TR 40-41)

### **References**

Applicant provided several letters of reference from his corporation:

- o Applicant's supervisor who has supervised him for two years and has known him for three years knows of no derogatory information about him. Applicant has continued the exemplary conduct at the workplace that he also demonstrated in the US military where he held Top Secret clearances. (Exhibit B) pride in his work and family. He is a "role model" for those around him as he is honest, trustworthy, and reliable. (Exhibit B) professional." He concluded that Applicant exemplifies the traits of a mature, responsible individual "with unwavering compliance to the ethical standards" of the company. (Exhibit B)

While in the US military for twenty years, Applicant received various awards, including a Meritorious Service Medal. (Exhibit A)

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. The mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

#### **Guideline B - Foreign Influence**

**The concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (2) may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.**

#### **Conditions that could raise a security concern and may be disqualifying include:**

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

#### **Conditions that could mitigate security concerns include:**

1. A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

### 3. Contact and correspondence with foreign citizens are casual and infrequent;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Foreign Influence**

Applicant has mitigated security concerns over foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: he has siblings who are citizens of India as well as friends from India and his wife has relatives who are citizens and reside in South Korea. The security concern under Guideline B, Foreign Influence, is that a security risk may exist when an individual's immediate family. . . and other persons to whom he or she may be bound by affection, influence, or obligation are: (1) not citizens of the United States or (3) or have relatives who are connected with any foreign government who may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. While I have considered these concerns, I conclude Applicant has presented sufficient evidence to meet the burden<sup>(2)</sup> those circumstances presents.

While born in India, Applicant came to the US to work in 1977 and joined the US military in 1979 before he became a US citizen. He became a naturalized US citizen in 1984 and has not returned to India in twenty years. Significantly, even before he became a US citizen, he was granted a security clearance in 1980. Later, he was granted SCI access and a Top Secret clearance in 1991, and a Secret clearance again in April 2000. He had a successful military career and retired honorably. Moreover, Applicant made evident that if there were any hint of coercion or pressure on himself or his family, he would immediately report such coercion to the appropriate US officials.

Foreign influence security concerns are mitigated<sup>(3)</sup> by the fact that his contact and correspondence with foreign relatives are infrequent; his brother lives in the US and is now a US citizen. One sister has a green card, lives in the US, and has applied for her US citizenship. Another lives in Canada and is a Canadian citizen; another lives in India; but neither have any ties to those governments. He has minimal contact with his wife's family and her son who live in South Korea; none have any ties to the government. Further, he is no longer in touch with some of his foreign friends and has limited contact with another friend. As his family and one friend who lives in the Dominican Republic have no formal ties to this foreign government; I conclude that there is no substantial likelihood that they would be subject to duress and thus exercise foreign influence over Applicant or create a situation that could result in the compromise of classified information. His friendships and ties to the Embassy of India while he was posted with the US military in South Korea more than twenty years ago, no longer raise any concern especially in light of his US military career. Thus, I conclude Applicant is not vulnerable to duress merely because of these family and friendship ties.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny.

After considering the Enclosure 2 Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant; so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.j. in Applicant's favor.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j.: For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

---

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Although the Government presented no evidence of the hostile nature of the relationship between the U.S. and India and South Korea, the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk. The Government did provide some information for Official Notice that both India and South Korea engage in economic espionage against the US, but that does not establish a hostile relationship. (ON I & II)

**3. Conditions that could mitigate security concerns include:**

1. A determination that the immediate family member(s)(spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;
2. Contacts with foreign citizens are the result of official United States Government business;
3. Contact and correspondence with foreign citizens are casual and infrequent;
4. The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.